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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

REGINALD OLIVER, et al.,
Plaintiffs,

VS.

CITY OF OAKLAND, et al.,
Defendants.

CASE NO: C08-04914 TEH

**STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER RE: CITY OF
OAKLAND POLICE DEPARTMENT
PERSONNEL, CRIMINAL
INVESTIGATION, INTERNAL AFFAIRS
AND DISCIPLINE RECORDS**

Plaintiffs and Defendants, by and through their attorneys of record, do hereby stipulate to the following protective order:

Stipulated Protective Order
Reginald Oliver, et al. v. City of Oakland, et al.
Case No. C08-04914 TEH 1

2. DEFINITIONS

Stipulated Protective Order
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1 for Plaintiffs' damages for a period covering the dates of their employment with the Oakland
2 Police Department through and including the date of this Order;

3 b) Completed Internal Affairs, Shooting Boards, Administrative Hearings (e.g., Skelly
4 Hearings and Arbitrations) and Criminal Investigation files pertaining to complaints regarding
5 Defendant KARLA RUSH and/or any other City of Oakland Police Officers subsequently named
6 as defendants in this case , including complaints concerning performance of duty, untruthfulness,
7 fraud, abuse of authority, false arrest, fabrication of evidence, excessive force, perjury, improper
8 warrant applications and/or affidavits, unreasonable searches and seizures, report writing, racial
9 profiling, racial discrimination, racially disparate treatment and incidents in which Defendant
10 KARLA RUSH and/or any other City of Oakland Police Officers subsequently named as
11 defendants in this case is/are alleged to have obtained warrants based on false, misleading and/or
12 incorrect information;
13
14

15 c) Any completed Internal Affairs, Criminal Investigations, Administrative Hearings
16 (e.g., Skelly Hearings and/or Arbitrations), personnel files and/or other Oakland Police
17 Department files pertaining to the incidents in which Defendant KARLA RUSH and/or any other
18 City of Oakland Police Officers subsequently named as defendants in this case which were based
19 on false, incorrect and/or misleading information and/or other complaints relating to searches
20 and seizures conducted by her while she/they has/have been employed by the City of Oakland
21 Police Department.
22
23

24 2.4 "Highly Confidential-Attorneys' Eyes Only" Information or Items:

25 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or
26 non-party would create a substantial risk of serious injury that could not be avoided by less
27 restrictive means.
28

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7. Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential-Attorneys Eyes Only.”

2.8. Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential-Attorneys’ Eyes Only.”

2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10. House Counsel: attorneys who are employees of a Party.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12. Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party and who, at the time of retention, is not anticipated to become an employee of a Party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: person or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

1 The protections conferred by this Stipulation and Order cover not only Protected Material
2 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
3 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
4 parties or counsel to or in court or in other settings that might reveal Protected Material.

5
6 **4. DURATION**

7 Even after the termination of this litigation, the confidentiality obligations imposed by
8 this Order shall remain in effect until a Designating Party agrees otherwise in writing or court
9 order otherwise directs.

10 **5. DESIGNATING PROTECTED MATERIAL**

11
12 **5.1 Exercise of Restraint and Care in Designating Materials for Protection.** Each Party or
13 non-party that designates information or items for protection under this Order must take care to
14 limit any such designation to specific material that qualifies under the appropriate standards. A
15 Designating Party must take care to designate for protection only those parts of material,
16 documents, items, or oral or written communications that qualify – so that other portions of the
17 material, documents, items, or communications for which protection is not warranted are not
18 swept unjustifiably within the ambit of this Order.

19
20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
21 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
22 unnecessarily encumber or retard the case development process, or to impose unnecessary
23 expenses and burdens on other parties) expose the Designating Party to sanctions.

24
25 If it comes to a Party's attention that information or items that it designated for protection
26 do not qualify for protection at all, or do not qualify for the level of protection initially asserted,
27
28

1 that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken
2 designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
4 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
5 material that qualified for protection under the Order must be clearly so designated before the
6 material is disclosed or produced.
7

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (apart from transcripts of depositions or other
10 pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
11 "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" at the top of each page that
12 contains protected material. If only a portion or portions of the material on a page qualifies for
13 protection, the Producing Party must clearly identify the protected portion(s) (e.g., by making
14 appropriate markings in the margins) and must specify, for each portion, the level of protection
15 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
16 EYES ONLY").
17
18

19 A Party or non-party that makes original documents or materials available for inspection
20 need not designate them for protection until after the inspecting Party has indicated which
21 material it would like copied and produced. During the inspection and before the designation, all
22 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL—
23 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
24 copied and produced, the Producing Party must determine which documents, or portions thereof,
25 qualify for protection under this Order, then, before producing the specified documents, the
26 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
27
28

CONFIDENTIAL-ATTORNEYS' EYES ONLY") at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY").

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." When it is impractical to identify separately each portion of testimony that is entitled to protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are appropriate designated for protection with the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY," as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the

1 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
 2 or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only portions of the
 3 information or item warrant protection, the Producing Party, to the extent practicable, shall
 4 identify the protection portions, specifying whether they qualify as “Confidential” or as “Highly
 5 Confidential – Attorneys’ Eyes Only.”

6
 7 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 8 designate qualified information or items as “Confidential” or “Highly Confidential—Attorneys’
 9 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection
 10 under this Order for such material. If material is appropriately designated as “Confidential” or
 11 “Highly Confidential—Attorneys’ Eyes Only” after the material was initially produced, the
 12 Receiving Party, on timely notification of the designation, must make reasonable efforts to
 13 assure that the material is treated in accordance with the provisions of the Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15
 16 6.1 Timing of Challenges. Unless a proper challenge to a Designating Party’s
 17 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 18 economic burden, or a later significant disruption or delay of the litigation, a Party does not
 19 waive its right to challenge a confidentiality designation by electing not to mount a challenge
 20 promptly after the original designation is disclosed.

21
 22 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
 23 confidentiality designation must do so in good faith and must begin the process by conferring
 24 directly (in voice to voice dialogue; other forms of communication are not sufficient) with
 25 counsel for the Designating Party. In conferring, the challenging Party must explain the basis for
 26 its belief that the confidentiality designation was not proper and must give the Designating Party
 27

1 an opportunity to review the designated material, to reconsider the circumstances, and, if no
2 change in designation is offered, to explain the basis for the chose designation. A challenging
3 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
4 and confer process first.

5 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
6 designation after considering the justification offered by the Designating Party may file and
7 serve a motion under Civil Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
8 that identifies the challenged material and sets forth in detail the basis for the challenge. Each
9 such motion must be accompanied by a competent declaration that affirms that the movant has
10 complied with the meet and confer requirements imposed in the preceding paragraph and that
11 sets forth with specificity the justification for the confidentiality designation that was given by
12 the Designating Party in the meet and confer dialogue.

13 The burden of persuasion in any such challenge proceeding shall be on the Designating
14 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
15 question the level of protection tow which it is entitled under the Producing Party's designation.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
18 produced by another Party or by a non-party in connection with this case only for prosecuting,
19 defending, or attempting to settle this litigation. Such Protected material may be disclosed only
20 to the categories of persons and under the conditions described in this Order. When the litigation
21 has terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
22 DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL: Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

(a) employees of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(b) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound as specified above;

(f) the author the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY"
Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY" only to:

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(a) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(b) the Court and it’s personnel;

(c) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and

(d) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designation Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The

Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all of the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

10. FILING PROTECTED MATERIAL. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not in the public record in this action any Protected material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.

11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party, as used in this subdivision, “all Protected Material” includes all copies, abstracts compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead or returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity,

to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD,

DATED: December 15, 2008

By: 

JAMES B. CHANIN
Attorney for Plaintiff

DATED: December 15, 2008

By: 

STEPHEN Q. ROWELL

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Attorney for Defendants
City of Oakland and Karla Rush

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: December 17, 2008

THELTON E. HENDERSON
Judge of the United States District Court

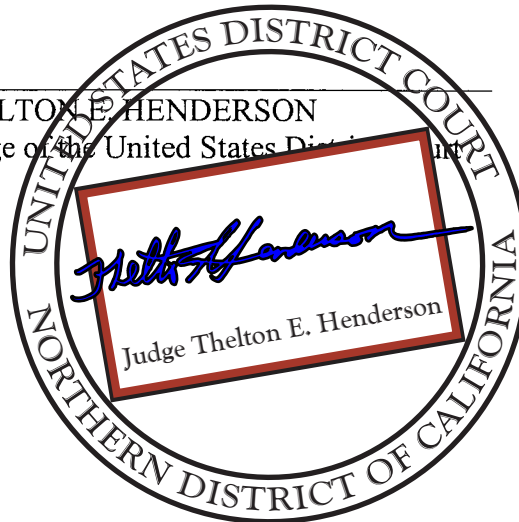


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States Court for the Northern District of California on

[date] in the case of *Reginald Oliver., v. City of Oakland, et al.*, Case
No. C08-04914 TEH I agree to comply with and be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District for the Northern
District of California for the purpose of enforcing the terms of this Stipulated Protective Order,
even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of

[print or type full address and telephone
number] as my California agent for service of process in connection with this action or any

proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]